

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO. 125 OF 2021

New India Assurance Co. Ltd.
Through its Branch Manager
Situated at 41-B, 4th Floor, Maker Tower -E,
Opp. world Trade Centre,
Cuffe Parade, Mumbai - 400 005
Policy No. 15170231170100012927
Validity: from 14/01/2018 to 03/01/2019
Insurer of M/Truck MH-11 AL-1298

....Appellant
(Ori. Insurer 2)

Versus

1. Shri Rajaram Dnyanu Shinde
Age 48 years, Father of the deceased
2. Mrs. Maya Rajaram Shinde
Age 46 years, mother of the deceased
3. Miss Varsha Rajaram Shinde
Age 19 years, Sister of the deceased
All residing at Indira nagar, Room no. A/45/398
Shri Krishna Welfare Society, Kokari Nagar,
Sion - Koliwada, Mumbai - 400 037
4. Shri. Dnyandeo Nana Shinde
At Khambalwadi, Post Dhakale,
Tal. - Baramati, Dist. Pune - 413102
Owner of M/tempo no. MH-12-HD-4858
5. Royal Sundaram General Insurance
Policy no. VGC 0511054000100
Validity: From 27/04/2018 to 26/04/2019
6. Shri Sanjay Shankar Kadav

At kadawadi, Post - Banpuri,
Tal. Patan, Dist. Satara - 415001
Owner of MH-11 AL-1398

....Respondents
(Present Respondent Nos. 1-3
being original Applicant
Nos. 1-3 present Respondent
Nos.4 to 6 are original Opp.
Parties.)

Mr. Rajesh Kanojia a/w Riddhi Chavan i/b Res Juris for the Appellant.
Mr. T. J. Mendon for the Respondents.

CORAM : SHIVKUMAR DIGE, J.

DATE : 12th APRIL 2023.

JUDGMENT. :

1. This appeal is preferred against order passed under Section 140 of Motor Accident Claims Tribunal.
2. It is contention of learned counsel for the appellant that deceased was gratuitous passenger. When deceased was gratuitous passenger in offending vehicle, the Appellant/Insurance Company is not liable to pay compensation. But tribunal has not considered this fact and directed the Appellant/Insurance Company to pay Rs.50,000/- under Section 140 of Motor Vehicle Act 1988, under no fault liability which is improper. Hence, requested to allow the

appeal.

3. It is contention of learned counsel for the Respondents/Claimants that the accident occurred between two vehicles, it was composite negligence. The petition under Section 166 of Motor Vehicle Act is pending before the tribunal, evidence is not closed there, so it can't be said deceased was gratuitous passenger or not. The order passed by the tribunal is legal and valid.

4. I have heard both learned counsel, perused order passed by Motor Accident Claims Tribunal (for short 'the Tribunal').

5. It is contention of learned counsel for the appellant that the deceased was gratuitous passenger in the offending vehicle. In my view, in accident two vehicles are involved whether deceased was gratuitous passenger or not proved before the tribunal. I am told that the proceeding under Section 166 of the Motor Vehicle Act is pending before the tribunal. If direction is given to decide the application under Section 140 of Motor Vehicle Act, along with the application pending under Section 166 of Motor Vehicle Act 1988, would suffice the purpose and I pass following order.

ORDER

- i. Appeal is partly allowed.
 - ii. The order passed by Motor Accident Claims Tribunal, Mumbai (for short 'the tribunal') in M.A.C.P. NO. 1791 of 2018 dated 15/11/2019 is modified as under:- "The Application under Section 140 of Motor Vehicle Act, 1988 be decided alongwith pending Claim Petition under Section 166 of MV Act. The issue raised by the Appellant in this Appeal be decided alongwith Application pending under Section 166 Motor Vehicle Act 1988."
 - iii. Appellant shall deposit the amount of Rs.50,000/- alongwith accrued interest thereon, before the Tribunal.
 - iv. The claimants shall not entitled to withdraw the said amount till decision of Application under Section 166 of Motor Vehicle Act, 1988.
5. All pending applications, if any, stands disposed of.

(SHIVKUMAR DIGE, J.)